

ESTTA Tracking number: **ESTTA541727**

Filing date: **06/05/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	The Republic of Tea, Inc.		
Entity	Corporation	Citizenship	California
Address	#5 Hamilton Landing, Suite100 Novato, CA 94949 UNITED STATES		

Attorney information	Michelle Alvey Husch Blackwell LLP 190 Carondelet Plaza, Suite 600 St. Louis, MO 63105 UNITED STATES pto-sl@huschblackwell.com, nicole.anderson@huschblackwell.com, Michelle.Alvey@huschblackwell.com Phone:314-480-1500
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Registration Subject to Cancellation

Registration No	4293105	Registration date	02/19/2013
Registrant	Amaca Investments, Inc. PO Box 1900 Fontana, CA 92334 UNITED STATES		

Goods/Services Subject to Cancellation

Class 030. First Use: 2011/10/11 First Use In Commerce: 2011/10/11
All goods and services in the class are cancelled, namely: Tea-based beverages; Tea-based beverages with fruit flavoring

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	85722806	Application Date	09/07/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SUPERFRUIT		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 005. First use: First Use: 2008/01/01 First Use In Commerce: 2008/01/01 Herbal teas for medicinal purposes Class 030. First use: First Use: 2008/01/01 First Use In Commerce: 2008/01/01 Tea
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Attachments	Cancellation.pdf(265154 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Michelle Alvey/
Name	Michelle Alvey
Date	06/05/2013

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on June 5, 2013.

/Michelle Alvey/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: SUPERFRUIT TODAY

In the matter of Registration No. 4293105

THE REPUBLIC OF TEA, INC.)	
)	
Petitioner,)	
)	Proceeding No.
v.)	
)	
AMACA INVESTMENTS, INC.)	
)	

Registrant.

PETITION TO CANCEL REGISTRATION NO. 4293105

The Republic of Tea, Inc., a California corporation with a place of business at #5 Hamilton Landing, Suite 100, Novato, California 94949 ("Petitioner"), is being and will be damaged by the continued registration of the mark shown at U.S. Registration No. 4293105 and hereby petitions to cancel Registration No. 4293105. The grounds for cancellation are as follows:

1. Registrant Amaca Investments, Inc., P.O. Box 1900 Fontana California 92334 ("Registrant") is the owner of U.S. Registration No. 4293105 for SUPERFRUIT TODAY for "Tea-based beverages; Tea-based beverages with fruit flavoring" in International Class 30 (the "Registration"). The Registration issued on February 19, 2013. Registrant filed the application for Registration on October 11, 2011. The alleged first date of use is October 11, 2011.
2. Petitioner owns extensive common law rights in and to the mark SUPEFRUIT for herbal teas for medicinal purposes ("Petitioner's Goods") throughout the United States.

Petitioner also owns U.S. Application No. 85722806 for its SUPERFRUIT mark (all of Petitioner's rights in and to its SUPERFRUIT mark are herein referred to as the "SUPERFRUIT Mark"). The mark that is the subject of the Registration was cited by the Examiner as a basis for refusal of Petitioner's application.

3. Since long prior to the filing date of the application for the Registration and Registrant's alleged date of first use, Petitioner has used the SUPERFRUIT Marks in connection with Petitioner's Goods that are similar to the goods covered by the Registration.

4. Petitioner has expended and continues to expend substantial resources to advertise and to promote the SUPERFRUIT Mark throughout the United States.

5. Petitioner's SUPERFRUIT Mark is distinctive, and is uniquely associated with Petitioner in connection with Petitioner's Goods, by reason of Petitioner's continuous and extensive use, advertising and promotion of the SUPERFRUIT Mark. Such advertising, promotion, and use occurred prior to the filing date of the application for the Registration and prior to Registrant's alleged date of first use.

6. Registrant's goods are or will be directed to the same or related class of consumers as are Petitioner's Goods and are or will be sold in the same channels of trade.

7. Registrant's SUPERFRUIT TODAY mark, as set forth in the Registration, is likely to cause confusion or mistake, or to deceive purchasers, and purchasers are likely to believe Registrant's goods are related to Petitioner's Goods, or that Registrant is in some way connected with, sponsored by, or approved by Petitioner in violation of Lanham Act §2(d) (15 U.S.C. §1052(d)).

8. In addition, upon information and belief, Registration No. 4293105 is void ab initio as a result of Registrant's failure to meet the statutory requirements including, without limitation, the statutory requirements regarding use.

9. Further, and in the alternative, upon information and belief, Registrant has abandoned the SUPERFRUIT TODAY mark due to non-use with the intent not to resume use.

WHEREFORE, Petitioner believes that it will be damaged by the continued registration of Registration No. 4293105 and requests that the Petition to Cancel Registration No. 4293105 be sustained in favor of Petitioner and that Registration No. 4293105 be canceled.

Petitioner requests that, if there is any insufficiency in the payment of the statutory filing fee for this Petition, such amount be debited from our Deposit Account No. 11-0160.

Respectfully submitted,

Dated: June 5, 2013

THE REPUBLIC OF TEA, INC.

By: /Michelle Alvey/
Michelle Alvey
Alan Nemes
HUSCH BLACKWELL LLP
The Plaza in Clayton Office Tower
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Telephone: (314) 345-6000
Facsimile: (314) 345-6060

Attorneys for The Republic of Tea, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PETITION TO CANCEL REGISTRATION NO. 4293105 has been duly served on the Registrant by mailing a copy of same via First Class Mail, postage prepaid, on this 5th day of June to:

AMACA INVESTMENTS, INC.
PO BOX 1900
FONTANA, CALIFORNIA 92334-1900

*/Michelle Alvey/*_____